

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOUGLAS J. HERST

Appeal No. 1998-2376
Application No. 08/400,325

ON BRIEF

Before THOMAS, BARRETT, and BARRY, Administrative Patent Judges.
BARRY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the rejection of claims 1-7. We reverse.

BACKGROUND

The invention at issue in this appeal relates to linear direct-indirect lighting fixtures. Such fixtures have bottom openings for providing direct lighting a top opening for providing indirect lighting. The fixtures are used in

institutional and commercial settings where they are subject to periodic cleaning and maintenance.

Heretofore, extruded housings for linear direct-indirect lighting fixtures have been fabricated in extruded, co-linear aluminum parts held together by cross braces to provide a linear lighting fixture of a desired length. The cross braces held the extruded parts in parallel such that parallel openings ran the length of the housing over which elongated light screens having a desired perforation or aperture pattern were placed to prevent viewers from looking directly into the interior of the fixture. The screens were made in perforated sections of sheet metal or plastic and were attached to adjacent co-linear housing elements by spring clips. Such a multiple-part construction was relatively cumbersome to assemble, however, and required a large inventory of parts. Furthermore, unsightly seams appeared along the edges and between the ends of abutting light screens thereby leaking light.

The appellant's invention is a housing for a linear direct-indirect lighting fixture wherein all of the components of the housing including the light screens are fabricated from a single extruded part. The housing includes opaque, elongated sidewalls having a top edge defining a top opening for providing indirect lighting, a corresponding elongated opaque central housing structure extending in parallel with the sidewalls, and an elongated light baffle plate interconnecting the sidewalls and central housing structure. The single extrusion construction of the invention greatly simplifies the assembly and manufacture of the fixture and eliminates unsightly seams and leakage points in the fixture housing.

Claim 1, which is representative for our purposes, follows:

1. An extruded housing for an elongated direct-indirect lighting fixture comprising

an opaque elongated sidewall portion having a top edge defining a top opening for providing indirect lighting,

an elongated opaque central housing structure in co-linear relation with said sidewall portion, and

an elongated light baffle plate interconnecting said sidewall portion and central housing structure, said baffle plate having a pattern of apertures for providing a direct lighting component from the luminaire,

said sidewall portion, central housing structure and baffle plate being a unitary part fabricated from a single extrusion.

The references relied on in rejecting the claims follow:

Brennan	2,824,216	Feb. 18, 1958
Lipscomb	2,874,271	Feb. 17, 1959
Griffin	4,698,733	Oct. 6, 1987
.		

Claims 1 and 3-4 stand rejected under 35 U.S.C. § 103 as obvious over Lipscomb in view of Griffin. Claims 2 and 5-7 stand rejected as obvious over Lipscomb in view of Griffin further in view of Brennan. Rather than repeat the arguments of the appellant or examiner in toto, we refer the reader to the brief and answer for the respective details thereof.

OPINION

In deciding this appeal, we considered the subject matter on appeal and the rejection advanced by the examiner.

Furthermore, we duly considered the arguments and evidence of the appellant and examiner. After considering the totality of the record, we are persuaded that the examiner erred in rejecting claims 1-7. Accordingly, we reverse.

We begin by noting the following principles from In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993).

In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).... "A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." In re Bell, 991 F.2d 781, 782, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

With these principles and finding in mind, we consider the examiner's rejection and appellant's argument.

The examiner asserts, "[i]t would have been obvious ... to make the unitary housing 58 of Lipscomb by way of an extrusion process" (Examiner's Answer at 5.) The

appellant argues, "Griffin does not disclose or suggest an extruded housing for a linear direct-indirect housing feature where the sidewalls, central housing structure and baffle plates are all fabricated as one part." (Appeal Br. at 7.)

Claims 1-6 recite a product by process. "If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985) (citing In re Marosi, 710 F.2d 799, 803, 218 USPQ 289, 292-93 (Fed. Cir. 1983); Johnson & Johnson v. W.L. Gore,

436 F.Supp. 704, 726, 195 USPQ 487, 506 (D. Del. 1977);
In re Fessman, 489 F.2d 742, 180 USPQ 324 (CCPA 1974)).

The examiner fails to show that the product in claims 1-6 is the same as or obvious from a product of the prior art. The claims specify in pertinent part the following limitations: "sidewall portion, central housing structure and baffle plate being a unitary part fabricated from a single extrusion."

The examiner admits that Lipscomb's side angle plate, integral center panel, and cellular lattice are not "extruded." (Examiner's Answer at 4.) To the contrary, the parts are "molded plastics to produce a unitary structure" Col. 3, ll. 2-3.

Although Griffin teaches a "housing **11** ... constructed of extruded aluminum," col. 3, ll. 41-42, the housing does not comprise a central housing structure or a baffle plate. To the contrary, the "extruded housing **11** [is] formed with a back

wall **13** and oppositely disposed side walls **15** and **17**." Col. 2, ll. 54-56. Accordingly, Griffin would not have suggested extruding Lipscomb's side angle plate, integral center panel, and cellular lattice. Furthermore, the examiner does not show that it would be possible to extrude, as a single part, the cellular lattice of Lipscomb. To the contrary, pulling the "egg crates" of the lattice, which are at right angles to the housing walls, through an extrusion die seems impossible. Relying on Brennan only to teach "a diffuser plate 1 being perforated across the length of the plate," (Examiner's Answer at 5), the examiner fails to allege, let alone show, that the reference cures the deficiency of Lipscomb and Griffin.

Because the examiner has not shown that the product in claims 1-6 is the same as or obvious from a product of Lipscomb, Griffin, and Brennan, we are not persuaded that teachings from the prior art would have suggested the limitations of "sidewall portion, central housing structure and baffle plate being a unitary part fabricated from a single extrusion." Therefore, we reverse the rejection of claims 1 and 3-4 as obvious over Lipscomb in view of Griffin and the

rejection of claims 2, 5, and 6 obvious over Lipscomb in view of Griffin further in view of Brennan.

Claim 7 recite a process. The claim specifies in pertinent part the following limitations: "extruding a unitary housing structure including a sidewall portion, a central housing structure, and a baffle plate interconnecting said sidewall portion and central housing structure"

As aforementioned, the examiner admits that Lipscomb's side angle plate, integral center panel, and cellular lattice are not extruded. Because Griffin teaches extruding only a housing formed with a back wall and oppositely disposed side walls, we are not persuaded that teachings from the prior art would have suggested the limitations of "extruding a unitary housing structure including a sidewall portion, a central housing structure, and a baffle plate interconnecting said sidewall portion and central housing structure"

Therefore, we reverse the rejection of claim 7 as obvious over Lipscomb in view of Griffin further in view of Brennan.

CONCLUSION

In summary, the rejection of claims 1 and 3-4 under 35 U.S.C. § 103 as obvious over Lipscomb in view of Griffin is reversed. The rejection of claims 2 and 5-7 as obvious over Lipscomb in view of Griffin further in view of Brennan is also reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
LEE E. BARRETT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
LANCE LEONARD BARRY)	
Administrative Patent Judge)	

Appeal No. 1998-2376
Application No. 08/400,325

Page 11

DONALD L BEESON
ONE KAISER PLAZA
SUITE 2360
OAKLAND, CA 94612

LLB/dal